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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 8th October 1958

S.O. 2138.—In pursuance of the provisions of sub-rule (3) of rule 140 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, and in continuation of its notification No. 82/466/57/791, dated the 8th January, 1958/18th Pausa, 1879 (Saka), published in Gazette of India, Extraordinary, Part II—Section 3, No. 33, dated the 20th January, 1958/Pausa 30th 1879, the Election Commission hereby publishes the judgment of the High Court of Bombay at Nagpur, delivered on the 13th/14th March, 1958, on the appeal filed by Shri Lal Shyam Shah, son of Lal Bhagwan Shah, Cultivator, Panabaras, Tahsil Balod, District Durg (Madhya Pradesh), against the order, dated the 7th December, 1957, of the Election Tribunal, Wardha, in Election Petition No. 466 of 1957.

IN THE HIGH COURT OF BOMBAY AT NAGPUR

APPEAL No. 18 OF 1958 FROM ORIGINAL DECREE

Lal Shyam Shah, son of Lal Bhagwan Shah—*Appellant (original petitioner)*

Versus

V. N. Swami, Advocate—*Respondent (original respondent).*

Appeal against the Order, dated the 7th December, 1957, passed by T. R. Gosewade, Esquire, Member of the Election Tribunal, Wardha, in Election Petition No. 466 of 1957.

Mr. M. R. Bobde and Mr. K. G. Chendke, Advocates *for the appellant.*

Mr. R. G. Siras, Advocate *for the respondent.*

(Coram: Tambe and Kotval, *JJ.*)

The 13/14th March, 1958.

ORAL JUDGMENT (per Tambe, *J.*)

This is an appeal under section 116-A of the Representation of the People Act, 1951 (XLIII of 1951), hereinafter called the Act, by one Lal Shyam Shah, son of Lal Bhagwan Shah, arising out of the decision of the Election Tribunal, Wardha.

There was an election held for a seat in the House of the People from the Chanda Parliamentary Constituency. The date of nomination was 29th January, 1957. The appellant Lal Shyam Shah, the respondent V. N. Swami, and three others filed in their nomination forms. The scrutiny was held on 1st February,

1957. No objection was raised by the appellant to the candidature of the respondent at that stage. The other three candidates withdrew in due time and the election was fought only by the appellant and the respondent. Polling was held on 25th February, 1957, 6th March, 1957 and 11th March, 1957. Counting of votes took place on 23rd March, 1957, and on completion of the counting on the same day, *i.e.* on 23rd March, 1957, the respondent was declared as elected. Respondent secured 1,19,949 votes while the appellant secured 97,973 votes. The appellant thus lost by a margin of 21,976 votes. The appellant then on 2nd May, 1957 made a petition before the Election Commission of India under sections 80 and 81 of the Act, challenging the election of the respondent on various grounds. Thereafter the Election Commission appointed a one man Election Tribunal presided over by Mr. T. R. Gosewade, District Judge, Wardha, and referred the petition to that Tribunal for trial. The petition was dismissed by the Election Tribunal and hence the appellant has come to this court.

The election of the respondent was challenged on various grounds before the Tribunal. It is, however, not necessary to state all the allegations on which the said election petition was founded as the controversy raised before us is limited to only a few of them. The questions raised before us fall under two categories. The first category is that the respondent was disqualified to be chosen to fill the seat under the provisions of the Constitution as well as under the provisions of the Act. These contentions are raised under the provisions of section 100(1)(a) and in the alternative under section 100(1)(d)(i) and (iv). The second category is the alleged corrupt practices on the part of the respondent which have vitiated the election. These alleged corrupt practices fall within the provisions of section 123(1)(b) and section 123(3) and (4).

As regards the alleged disqualification of the respondent to be chosen to fill the seat, the appellant in para 3(i) of his petition alleged that the respondent was a partner of the C.P. Development Company which was the Managing Agency of the Ballarshah Timber Syndicate Ltd., Ballarshah, District Chanda; the said Ballarshah Timber Syndicate (hereinafter called the syndicate) had entered into an agreement with the railway administration for the supply of wooden sleepers for laying down rail roads; the respondent was, therefore, disqualified to be a candidate as he was interested in that capacity in contracts entered into by the Syndicate with the Government. In reply, the respondent in his statement, dated 10th July, 1957 admitted that he was the partner of the C.P. Development Company and a Director of the Syndicate. He denied that he got any remuneration for the job. He further stated that some contracts were made in the years 1953 and 1954 by the Syndicate with the Southern Railway for supply of sleepers but, according to him, they were fully discharged by June 1956, and hence no contracts existed or continued on the material date. He further pleaded that in June 1956 the Board of Directors of the Syndicate decided not to deal in sleepers any further and resolved on 16th June, 1956 to deal only in round logs thereafter; since then the Company had totally ceased to prepare and supply wooden sleepers. He further pleaded that the General Manager of the Southern Railway had given a certificate, dated 18th January, 1957 declaring that there was then no contract pending between the Syndicate and the Railway for supply of wooden sleepers. Thus, according to him, he was not disqualified to be a candidate for the seat. In the same statement he raised a contention that the allegations made by the appellant in his petition were absolutely vague and indefinite and therefore the petition was not maintainable on this ground. It appears that on 30th August, 1957 an application was made by the respondent under Order 6, Rule 16 of the Civil Procedure Code, praying that certain pleas, including the present one, raised by the appellant, be deleted from the election petition on the ground that full particulars were not stated. As regards this question, the respondent in that application stated that the appellant had failed to give the name of the particular railway administration, the dates, duration and terms of the agreement or agreements and facts showing that the contracts were subsisting on the date of declaration of the respondent's election within the meaning of section 100(1)(a) of the Act, and, therefore, the allegations made in para 3(i) of the petition should be struck off. The appellant filed his reply dated 10th September, 1957 to the aforesaid application wherein he stated that the respondent himself had stated in his aforesaid reply that the Syndicate had some contracts for the supply of sleepers with the Southern Railway between 1953 and 1954 which were discharged in June, 1956; under these circumstances no more particulars were required. It appears that the aforesaid application of the respondent and reply of the appellant were considered by the Tribunal and on 4th September, 1957, the Tribunal ordered the appellant to furnish certain particulars and [illegible] to furnish them. He, however, did not furnish those [illegible] a further order was made by the Tribunal

on 19th September, 1957. By this order the Tribunal directed the appellant to give the date of the agreement and the name of the railway administration in question and also to state the fact whether the said agreement existed on the date of the election. It further directed that these particulars be supplied by 25th September, 1957 on which date it was proposed to fix the issues. In the statement filed on 25th September, 1957 appellant stated that he had sent his man to get information regarding the date and other details of the agreement with the railway administration and the same would be supplied at the time of the evidence. He further stated that the contention raised by him did not fall under section 83(b) of the Act but fell under section 36 read with section 7(d) of the Act and therefore further particulars were not required to be given. The respondent then made another application on 26th September, 1957 praying that the items for which the particulars were ordered to be furnished and had not been furnished be ordered to be struck off, or, in the alternative, the said items be not tried and be excluded from the issues which would be settled and tried. This application was decided by the Tribunal by its order, dated 26th September, 1957 and the Tribunal ordered that no issues should be framed in respect of the items in respect of which particulars had not been furnished by the appellant though ordered. After this order, the Tribunal finalised the issues and framed issues relating to this contention. Mr. Siras, learned counsel for the respondent, by way of preliminary objection, contends that the Tribunal was in error in framing these issues and deciding them, the appellant having failed to furnish the particulars; these pleadings should have been struck off. In support of his contention he relies on the following observations made by their Lordships of the Supreme Court in Bhikaji Keshao Joshi and another *v.* Brijlal Nandlala Biyani and others [1955 (2) S.C.R. 428 at p. 446]:

> " . . we think that in a case of this kind the Tribunal when dealing with the matter in the early stages should not have dismissed the application. It should have exercised its powers and called for better particulars. On non-compliance therewith, it should have ordered a striking out of such of the charges which remained vague and called upon the petitioners to substantiate the allegations in respect of those which were reasonably specific."

In our view, these observations are hardly of any assistance to Mr. Siras in support of this contention. The aforesaid observations of their Lordships relate to a plea raised of corrupt practices. Section 83(b) of the Act requires a petitioner to set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of such practice. So far as this contention is concerned, it will be seen that there is no allegation of any corrupt practice as such. Mr. Siras then argues that the same result would follow under Order 6, Rule 16. This contention also has no force. Rule 16 of Order 6 empowers the Court to order striking out any pleading which, in its opinion, may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit. Such is not the case here. The relevant provisions, in our view are rules 4 & 5 of Order 6 of the Code of Civil Procedure. Rule 4 provides that in all cases in which a party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. Rule 5 empowers the Court to order a party to furnish better particulars. The other made by the Tribunal obviously appears to be under the provisions of rule 5. But then when such an order is made it is open to a party to show reason for its inability to comply with the order and one of the grounds on which such an objection can be raised is that a party who has been ordered to furnish particulars is unable to give the particulars without laborious enquiry (Mulla's Code of Civil Procedure, 12th Edition, page 586), and such is the case here. Admittedly the appellant was not a party to the contracts made by the Syndicate with the railway company. He, therefore, could have no detailed information of these contracts. He made an attempt to comply with the order of the Court by sending his man to make inquiries from the railway company. He could not obtain the information. The railway company was not bound to disclose the information to him on a private inquiry. In these circumstances, these difficulties were placed before the Tribunal. After considering these difficulties, the Tribunal had framed the issues. Appellant in his petition has stated that there were contracts between the Syndicate and the railway company in which the respondent had an interest. The respondent in his reply has admitted that there were contracts between the

Syndicate and the railway company. He has not pleaded that he had no interest in those contracts, but, according to him, those contracts were discharged. On these pleadings, in our view, the issues framed by the learned judge of the Tribunal do arise. Further, in our opinion, no prejudice is caused to the respondent. The respondent being directly concerned with the affairs of the Syndicate it can safely be assumed that he knew the dates of the contracts. He also knew the railway company with which these contracts were made. No further particulars really were required to be furnished by the respondent in this respect. It is for him to show that these contracts had been discharged at the material time as pleaded by him. The preliminary contention raised by Mr. Siras is, therefore, over-ruled.

As regards this aspect of the case, the facts found by the Tribunal of which now are not in dispute are: The Syndicate had entered into three contracts with the Southern Railway for supply of sleepers. The first contract was made on 2nd March, 1954 for supply of 6,000 sleepers at certain rates and on certain terms as evidenced by Ex. R-144. In pursuance of its terms Rs. 5,100/- were deposited by the Syndicate with the Southern Railway as security for due performance of the contract. The second contract was made on 3rd July, 1954 for supply of 7,780 sleepers, the terms as regards which were evidenced by Ex. R-34. Towards this contract the Syndicate had also deposited a sum of Rs. 6,956 with the Southern Railway as security for due performance of the contract. The third contract also was made on 3rd July, 1954 for supply of sleepers of two varieties, 5,000 sleepers of one variety and 1,500 sleepers of another variety, on terms evidenced by Ex. R.143, and towards this contract a deposit of Rs. 3,338/- was made as security for due performance of the contract. Sleepers agreed to be supplied under the first and second contracts were supplied by 10th June, 1956. 5,000 sleepers under the third contract were also supplied by that date. The Syndicate was unable to supply the remaining 1,500 sleepers under the third contract for some reason or the other and it had so intimated to the Southern Railway of its inability to supply those sleepers. 90% of the price of all the goods supplied were received by the Syndicate on delivery of the railway receipts and the remaining 10% of the price of all the goods supplied were received by 5th January, 1957. General Manager of the Southern Railway, by his order, dated 15/16th November, 1956 (Ex. R-40), ordered that the amount of Rs. 5,100/- (security deposit of the first contract) be refunded to the Syndicate. By another order, dated 10/12th December, 1956 (this exhibit is not numbered though proved), he ordered that the amount of Rs. 6,956/- (security deposit of the second contract) be refunded to the Syndicate. As regards the third contract, as already stated, the full quantity was not supplied; under the terms of the contract the railway administration was entitled to forfeit the security deposit either in part or in full. The order in that respect was made by the General Manager on 16th/22nd November, 1956 (Ex. R-35) whereunder he ordered that Rs. 788/- be refunded to the Syndicate. The copies of all these orders were forwarded to the Syndicate. It appears that on receipt of the aforesaid three orders, the Syndicate wrote a letter on 12th January, 1957 (Ex. R-46) requesting the railway administration to grant it a certificate that there was no subsisting contract between the Syndicate and the Southern Group of Railways, and the General Manager on 18th/21st January, 1957 accepted the position and wrote that there was no contract pending between the Syndicate and the Southern Railway for supply of wooden sleepers (Ex. R-47). It appears that the Secretary of the Syndicate put up a note before the Directors of the Syndicate that they should not agree to the forfeiture of Rs. 2,550/- by the railway administration but they should make an attempt to get back the amount. This note was considered by the Board of Directors in its meeting held on 26th January, 1957, and the Bo did not accept the recommendation of the Secretary as in its view the quest of forfeiture of security deposit entirely rested with the General Manager under the terms of the contract. It decided that no further question be raised. In pursuance of the aforesaid orders of the General Manager a cheque for Rs. 5,100/- (security deposit of the first contract) was drawn by the Southern Railway on the Hyderabad Bank on 15th January, 1957. This cheque was received in the office of the Syndicate on 2nd February, 1957. It was sent by the Syndicate to its bank and after deducting discount Rs. 5,093/10/- were credited in the bank account of the Syndicate on 15th February, 1957. Similarly a cheque for Rs. 6,956 (security deposit of the second contract) was drawn by the Southern Railway on 18th February, 1957. It was received in the office of the Syndicate on 7th March, 1957. It was sent by the Syndicate to its bank on 8th March, 1957 and after deducting discount. Rs. 6,947/4/- were credited in the bank account of the Syndicate on 22nd March, 1957. Similarly a cheque for Rs. 788/- (security deposit remaining after forfeiture) was issued by the Southern Railway on 23rd

January, 1957. It was received in the office of the Syndicate on 22nd February, 1957. It was sent to its bank, and after deducting discount Rs. 778/6/6 were credited in the bank account of the Syndicate on 1st March, 1957.

Mr. M. R. Bobde, learned counsel for the appellant, contends that on these facts it is clear that between the material period, namely 29th January, 1957 (the date of nomination) and 23rd March, 1957 (the date of declaration of the result) the contracts were subsisting. The amount of security deposit had not been received by the Syndicate. The interest of the respondent in those contracts was, therefore, subsisting. He was, therefore, disqualified for being chosen as a member of the Parliament under section 7(d) of the Act. His election is, therefore, liable to be set aside. Under section 100(1)(a) of the Act or in the alternative under section 100(d)(i) or (iv) of the Act. Reliance is placed on *Chaturbhuj Vithaldas* v. *Moreshwar Parashram* (A.I.R. 1954 S.C. 236=1954, S.C.R. 817), *Satyendrakumar Das* v. *Chairman of the Municipal Commissioners of Dacca* (I.L.R. 58 Cal. 180) and *Promode Lal* v. *Additional District Magistrate* (A.I.R. 1957 Cal. 164). Mr. Siras learned counsel for the respondent, on the other hand, contends that the case falls only under section 100(1)(a) of the Act and not under section 100(1)(d)(i) or (iv) of the Act. According to him, the appellant having failed to raise an objection at the stage of the scrutiny of the nomination papers, provisions of clause (d)(1) are not applicable. Clause (a) of section 100(1) is specifically, in terms, applicable to the facts of the present case. Therefore, clause (d)(iv), which is generally worded, is excluded. Under clause (a) of section 100(1), the election of the respondent is liable to be set aside only if it is shown that he was suffering from any disqualification on the date of the election. The 'date of the election' is defined in the newly introduced section 67A which is the date on which a candidate is declared elected under section 66 of the Act which in the instant case was 23rd March, 1957. He contends that the aforesaid statement of facts shows that all the deposit amounts were received prior to 23rd March, 1957. The respondent, therefore, was not disqualified on the date of his election and clause (a) of section 100(1) also is, therefore, not attracted. In the alternative he contends that on the facts of the case the contract relating to the supply of sleepers between the Syndicate and the railway company was not subsisting and was fully discharged even prior to the date of nomination. The respondent was, therefore, not disqualified for being chosen as a member of the Parliament even if provisions of section 100(1)(d)(i) and/or (iv) are held to be applicable. Reliance is placed on *Durga Shankar Mehta* v. *Thakur Raghuan Singh and others* [1955(1) S.C.R. 267 at p. 277].

Section 100(1)(a) of the Act reads as follows:—

"Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2), if the Tribunal is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution or this Act..

* * *

The Tribunal shall declare the election of the returned candidate to be void."

According to Mr. Siras, "the date of his election" is the date on which the result of the election is declared. According to Mr. Bobde, section 67-A has no application whatsoever in construing the phrase "the date of his election" occurring in section 100(1)(a). Section 67-A is only introduced by way of amendment in this Act to set at rest the controversy which arose prior to the amendment of the Act. The controversy was what was the starting point for computing the period of limitation for making an election petition under section 81 of the Act. According to one view, it was the date on which the result was declared. According to another view, it was the date of publication of the result in the official gazette. To set at rest this controversy section 67A was introduced. The term 'election' is used in a very wide sense and it commences from nomination and the process is continued till the result is declared. It is in this sense that the term 'election' in section 100(1)(a) should be construed. It is not possible to accept the contention of Mr. Bobde. True, the word 'election' used in the Constitution as well as in the Act issued in a very wide sense and as observed by their Lordships of the Supreme Court in *Chaturbhuj Vithaldas* v. *Moreshwar*

Parashram (A.I.R. 1954 S.C. 236=1954 S.C.R. 817), it commences from the date of nomination and ends with the declaration of, but under clause (a) of section 100(1) what we have to construe is not merely the word 'election', but the phrase 'the date of election', and in construing the phrase 'the date of election' occurring in clause (a) of section 100(1) reference has to be made to section 67-A, and the meaning given in the interpretation clause has to be given to the phrase wherever occurring in the statute. Section 67-A is in terms mandatory. It states that for the purposes of the Act, the date on which a candidate is declared by the Returning Officer under the provisions of section 53, section 54, section 55A or section 66, to be elected to a House of Parliament or of the Legislature of a State shall be the date of election of that candidate. We are concerned with a contested election to the House of Parliament for an unreserved seat. The relevant section applicable is section 66. The result of the election under section 66 in the instant case was declared on 23rd March, 1957. On facts stated above, all the payments including those of the security deposits also had been received by the Syndicate prior to that date. Section 100(1)(a), therefore, is not attracted to the contention raised. Now if this clause alone governs it then the challenge to respondent's election on this ground must fail.

It is next necessary to consider whether it falls under section 100(1)(d)(i) of the Act. Clause (d)(i) reads as follows:—

"(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination.

The date of nomination as already stated was 29th January, 1957. The date of scrutiny was 1st February, 1957. The nomination of respondent was not challenged by the appellant at that stage. In these circumstances it is to be seen whether the nomination of respondent was improperly accepted. Article 84 of the Constitution prescribes the qualification for members of the Parliament. It provides that a person shall not be qualified to be chosen to fill a seat in the Parliament unless he (a) is a citizen of India, (b) is, . . . in the case of a seat in the House of the People, not less than 25 years of age, and (c) possesses such other qualification as may be prescribed in that behalf by or under any law made by the Parliament. It is not in dispute that the respondent is a citizen of India. It is also not in dispute that he is over 25 years of age. It is then necessary to see whether he possessed such other qualifications as may be prescribed in that behalf by or under any law made by the Parliament. This brings us to the provisions of the Act. Section 4(d) of the Act provides that a person shall not be qualified to be chosen to fill a seat in the House of the People unless, in the case of any other seat, he is an elector for any Parliamentary constituency. Clauses (a) to (c) of section 4, which relate to a seat reserved for scheduled castes or scheduled tribes have no application to the facts of the instant case and the only relevant clause is clause (d). It is next to be seen what are the qualifications of an elector. 'Elector' is defined in section 2(e) of the Act. It provides that an 'elector' in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950 (XLIII of 1950). It is not contended that the respondent was suffering from any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950. Respondent, therefore, was a person qualified to be chosen under the aforesaid provisions of the Constitution and the Act. Nomination paper was presented on 29th January, 1957 under the provisions of section 33 of the Act. Respondent also duly made a deposit under section 34 of the Act. Nomination papers were scrutinised on 1st February, 1957. Section 36 of the Act relates to the objection which could be raised to the nomination of a candidate on the date of the scrutiny of the nomination papers. One of the grounds is that the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely articles 84, 102, 173 and 191, and Part II of the Act. The only relevant article is clause (e) of Article 102. It reads:

"102. (1) A person shall be disqualified for being chosen as, and for being a member of either House of Parliament—

* * *

(e) If he is so disqualified by or under any law made by Parliament."

The relevant provision of law made by the Parliament which falls under Part II of the Act is section 7 of the Act. The contention raised is under clause (d) thereof. It reads:

> "7. A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—
>
> (a) * * *
>
> (b) * * *
>
> (c) * * *
>
> (d) If, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to. . . . the appropriate Government."

The contention raised is that the respondent had a share in the contracts with the appropriate Government (here the Central Government) *i.e.* respondent had a share in the contracts of supply of sleepers to the Southern Railway. This contention, in our opinion, could have been raised at the stage of the nomination, and if substantiated, would have disqualified the respondent from contesting the seat. This contention, however, was not raised at that stage. In these circumstances, it cannot be said that the nomination of the respondent was improperly accepted by the returning officer. In *Durga Shankar Mehta* vs. *Thakur Raghuraj Singh and others* [1955 (1) S.C.R. 267] their Lordships at page 277 have observed:

> "As no objection was taken to his nomination before the Returning Officer at the time of scrutiny, the latter was bound to take the entry in the electoral roll as conclusive: and if in these circumstances he did not reject the nomination of Vasant Rao, it cannot be said that this was an improper acceptance of nomination on his part which section 100(1)(c) of the Act contemplates. It would have been an improper acceptance, if the want of qualification was apparent on the electoral roll itself or on the face of the nomination paper and the Returning Officer overlooked that defect or if any objection was raised and enquiry made as to the absence of qualification in the candidate and the Returning Officer came to a wrong conclusion on the materials placed before him. When neither of these things happened, the acceptance of the nomination by the Returning Officer must be deemed to be a proper acceptance. It is certainly not final and the Election Tribunal may, on evidence placed before it, come to a finding that the candidate was not qualified at all."

True, in the aforesaid case their Lordships were construing the provisions of section 100(1)(c) as it stood prior to the amendment of section 100, but there is no material difference between the former section 100(1)(c) and the present section 100(1)(d)(i). These observations, in our opinion, will, therefore, apply with equal force to the contention raised. We, therefore, hold that the provisions of section 100(1)(d)(i) are not attracted to it.

The question next to be considered is whether the provisions of section 100(1)(d)(iv) are attracted to the contention raised. Clause (d)(iv) provides that if non-compliance with the provisions of the Constitution or of the Act or of any rules or orders made under the Act has materially affected the election of a returned candidate, then his election is liable to be set aside. As already shown, the contention raised would amount to non-compliance of the provisions of Article 102(1)(e) of the Constitution read together with section 7(d) of the Act. If the contention raised is good, then the person who was disqualified on the date of the scrutiny of the nomination paper for being chosen at the election has been declared elected. The contest being only between the appellant and respondent, the result of the election undoubtedly would be materially affected in the event the appellant is able to establish on facts that the contention raised is good. The contention raised, therefore, in our view, falls under clause (d)(iv) of section 100(1) of the Act. Mr. Siras contends that the provisions of section 100(1)(d)(iv) are general while the provisions of section 100(1)(a) are special covering the same subject matter and the cannon of construction in such a case is that the special provision should prevail as against the general provision; section 100(1)(d)(iv) is, therefore, not attracted to this case but the relevant provision that would be attracted is section 100(1)(a). It is not possible for us to accept this contention. In our opinion, these two provisions do not cover the same subject matter. Section 100(1)(a) governs a case where a

disqualification is incurred at a stage subsequent to a stage of the scrutiny of the nomination papers and is in existence at the date of election. When the contention raised is that a disqualification was incurred and was in existence at the date of the nomination section 100(1)(a) would have no application. The provisions that would govern such a case would be section 100(1)(d)(iv) of the Act.

It is then to be considered whether the appellant had been able to establish that the respondent had interest in the contract of supply of sleepers to the railway company at the date of the nomination. Mr. Bobde very vehemently contends that though the Syndicate had completed its part of the contract, namely supplying of goods, and though the price of those goods had been fully paid by the railway company prior to the date of nomination, the security deposits had not been returned to the Syndicate; that was done subsequent to the date of nomination; the contract for supply of sleepers, therefore, was not discharged as the terms relating to the return of the deposit formed integral part of the contract. Reliance was placed on the following observations of their Lordships of the Supreme Court in *Chatturbhuj Vithaldas Jasani* v. *Moresh Parashram and others* (1954 S.C.R. 817 at p. 831):

> "The question then is, does a contract for the supply of goods terminate when the goods are supplied or does it continue in being till payment is made and the contract is fully discharged by performance on both sides? We are of opinion that it continues in being till it is fully discharged by performance on both sides."

In our opinion, these observations of their Lordships of the Supreme Court do not support the contention raised by Mr. Bobde. No doubt, on the facts found in that case their Lordships held that as the price of the goods supplied remained to be paid by a buyer to the seller the contract for supply of goods was not discharged. The reason given by their Lordships is that so long as the price of goods supplied is not paid by the buyer possibility of the liability being disputed by him remains. And in that event a conflict between the duty and interest would arise before the returned candidate. Such, however, is not the case here. The facts stated above would show that prior to the date of nomination the price of the goods had been fully paid. The accounts between the parties had also been finally settled. The railway administration after settlement of the accounts had further ordered that the deposits be returned. On the terms of the contracts these security deposits were returnable only on the completion of the contracts for supply of sleepers. In the case of the third contract, the railway administration had forfeited Rs. 2,550/- out of the deposit amount of Rs. 3,338/-. This forfeiture order was accepted by the Syndicate. The General Manager had issued orders to return the deposits and issue cheques therefor. After these orders the Syndicate had written to the railway administration for giving it a certificate that the contract of supply of goods was fully discharged and the railway administration by its letter, dated 18th/21st January, 1957, Ex. R-47, issued a certificate to the Syndicate to the effect that there was no contract for supply of wooden sleepers pending then between the parties. On these facts, in our opinion, no dispute relating the contract for supply of goods or the return of the security deposits on termination of the contract of supply of goods had remained outstanding, between the parties. The contract stood fully discharged and nothing had remained to be done except the routine matters of issue of cheques in pursuance of the orders of the General Manager. Mr. Bobde contends that the railway administration could have gone back on its words and could have refused to pay the amount if it had found that the goods supplied were defective in some way or there was any deficiency in the quantity claimed to have been supplied. In our opinion there is no scope for such a contention, in view of the facts established in this case. Mr. Bobde further contends that the railway administration was liable to pay full amount of the deposits to the Syndicate; it had not paid the full amount; it had issued only the cheques; the amount credited in the bank account of the Syndicate was after deducting the discount; this loss had fallen to the Syndicate; the Syndicate could have raised an objection and claimed the full payment of deposit; the contract, therefore, was not discharged. This contention also, in our opinion, does not arise. It was open to the Syndicate to accept the orders of the General Manager and treat the contract as discharged. It is well established that one of the modes by which a contract could be discharged is by an agreement between the parties and this, in our opinion, has happened in this case, and the contract between the Syndicate and the railway administration for supply of wooden sleepers was discharged by a contract between them as evidenced by the correspondence terminating with the letter of the railway administration of 18th/21st January, 1957 (Ex. R-47). And this has happened after final settlement of

accounts between parties. There was no likelihood of any dispute arising between the parties relating to the said contracts of supply of goods. The other two decisions relied on by Mr. Bobde also, in our opinion, have no application to the facts of this case. In this view of the matter, in our opinion, the respondent was not disqualified for being chosen as member of the House of the People.

We next come to the contentions raised on behalf of the appellant regarding the corrupt practices on the part of the respondent. Before we proceed to deal with each of the contention separately, it would be better to state the relevant provisions of law. Section 123 of the Act defines corrupt practices. It is not contended on behalf of the respondent that even if the appellant is able to establish his allegations, they would not amount to corrupt practices. Coming to section 100, which deals with the grounds for declaring election void, and reading section 100(1)(b) and section 100(1)(d)(ii) together it becomes clear that if the appellant is able to establish that respondent or his election agent or any other person with their consent has committed a corrupt practice, then that itself is sufficient to set aside his election. But if that is not established and it is established that the corrupt practice has been committed in respondent's interest by a person other than the respondent or his election agent or a person acting with their consent then the appellant shall have further to establish that the result of the election has been materially affected by that corrupt practice. In the light of this position, the facts in this case will have to be investigated.

Regarding the corrupt practices, the first contention raised before us [3(xii) of the petition] is that in thickly populated areas the tribals are in majority, the canvassers of respondent Anandrao Gawande, Chilke, etc., made a propaganda that the appellant does not belong to Gond tribe; Shah stands for Mohomedan therefore they told the voters not to be misguided by the name "Shah"; this happened during the last week of February, 1957. The appellant further alleged that this propaganda was made at the instance of the respondent. In pursuance of the order made by the Court to supply particulars, the appellant stated that this propaganda was made by Anandrao Gawande and Sakharam Chilke between 26th February, 1957 and 1st March, 1957 at village Borda, Gondsawari, Pimpalkhut, Chichpalli, Ghantachowki, Waigaon, Nimbala, Walni, Zari, Peth, Haldi, Chiroli, etc. It is not in dispute that the appellant is a Gond and is not a Muslim. If the appellant is able to establish the aforesaid allegations then it is clear that at the instance of the appellant this false propaganda was made against the appellant on the ground of his caste. Coming to the evidence, reliance was placed by Mr. Bobde on the evidence of Bhagwati Prasad (A.W. 2), Ganpat (A.W. 6) Gyanba (A.W. 26), Kedari (A.W. 30), Tulsiram (A.W. 31), Kotpalliwar (A.W. 41), Ramchandra Tekam (A.W. 42) and Vishveshvar Rao (A.W. 43). Out of these witnesses, in our view, the evidence, that is admissible, is only of three witnesses: Ganpat (A.W. 6), Gyanba (A.W. 26) and Kedari (A.W. 30). The other evidence is hearsay. All they have said is that when they had gone to certain villages they learnt that such a propaganda was made. They themselves had not heard the propaganda being made. This type of evidence, in our view, is clearly admissible. Even if we accept this evidence of these witnesses, it does not go to show that this propaganda was made by either Sakharam Chilke or by Anandrao Gawande or was made with the consent of the respondent or his election agents. Therefore, in absence of any evidence that the result of the election has been materially affected by this propaganda, it does not assist the case of the appellant. Coming to the evidence of the remaining three witnesses, namely Ganpat (A.W. 6), Gyanba (A.W. 26) and Kedari (A.W. 30), Ganpat (A.W. 6) deposes that he had gone with the loud speaker to Chinchpalli; on that day he found Anandrao Gawande and Sakharam Chilke in a jeep car with a loud speaker and there they told the people on the loud speaker that the appellant was a Musalman, and therefore they should not vote for him and if they elected the appellant there would be another Pakistan. He further deposes that after Anandrao Gawande and Sakharam Chilke had left the place, he himself talked on the loud speaker on behalf of the appellant and told the people that the appellant was not a Musalman but that he was Adiwasi. On his own showing this witness is interested in the appellant and, in our opinion, was rightly disbelieved by the Tribunal. Kedari (A.W. 30) has deposed that about 7 days before the polling day some Congressmen had come for canvassing at Chichpalli on a market day; out of them one was Sakharam Chilke; there was a loud-speaker in the car in which they had come and one of them was talking on the loud-speaker that the appellant was not a Gond and that he was a Musalman and that the people should vote for the Congress. From his cross-examination it appears that he is closely associated with Vishveshvarrao of Aheri, who is the cousin of the appellant. He is unable to tell the names of the people present either as speakers or as canvassers except that of

Sakharam Chilke. This indicates that he had only come to support the case of the appellant. He is a resident of that place and it is difficult to believe that he could not remember the name of any other person of the village who was then present. No reliance can be placed on his evidence. The third witness is Gyanba (P.W. 26). His evidence is that one Marote was telling the people at Malowada that the appellant was not a Gond and that he was fighting for his Jamindari and he would not be able to do any good to them and they should not vote for him. He also told them that the Congress would be good to them and they should vote for the Congress. Now it will be seen that his evidence is at variance with the pleas raised. The plea raised was that the propaganda was made at the instance of the respondent by Anandrao Gawande and Sakharam Chilke. The evidence of this witness relates to the alleged speech made by one Marote. Even if we accept this evidence of this witness, in the absence of any evidence that the election had been materially affected by this propaganda, it cannot assist the case of the appellant, as it has not been shown that Marote did this propaganda with the consent of the respondent or his election agents. In our opinion, the Tribunal had rightly disbelieved the aforesaid witnesses including the witnesses Ganpat and Kedari. Apart from the reason given by the Tribunal for not believing the aforesaid witnesses, in our view, there is an important circumstances which casts a grave doubt about the truthfulness of these witnesses. These witnesses are interested in the appellant. If they had known that such a propaganda. But we have not been able to find anywhere in the evidence of the appellant any mention made that the complaints were received by him that propaganda was being made against him on the ground that he was a Musalman. The only passage to which our attention was drawn by Mr. Bobde, is para 4 of his evidence. It is to the following effect:

> "I toured in Chand Parliamentary constituency in the last election campaign. In my election campaign no one directly questioned me about the community to which I belonged but when I had been to Chamori for the election propaganda I was told by persons collected there that Mr. Kannamwar who had been also there on that very day mentioned in his public speech that I am not a Gond, as my name ends with Shah. I have been trying to promote the interests of Adiwasis in the Schedules area. When I had been to Dhonora I was told that I was contesting the election to get back my Jamindari and to bring back the British Raj. There I also came to know that I was trying to create a Gond Raj. All these representation were false. Scheduled area is populated by backward and sentimental people. This propaganda resulted in adverse effect on election against us."

From this evidence of the appellant it is clear that the only complaint received by him on this score was as regards the speech made by Mr. Kannamwar. No complaint appears to have been made to him of any propaganda being made by Anandrao Gawande or Sakharam Chilke or any other person on behalf of the respondent. In these circumstances, in our view, the decision of the Tribunal on issues raised in this respect of this contention, namely issues 11(a) and (c), is in no way vitiated.

The next contention raised [3(xxxvi) of the petition] is that Mr. M. S. Kannamwar, a candidate from one of the Legislative Constituencies of the Bombay State Assembly forming part of the Chanda Parliamentary Constituency, during the course of his election meeting announced at Kurkheda on 9th March, 1957 and at Chamorshi on 10th March, 1957 that the appellant wanted to establish a Gondi Rajya. The voters were asked to verify before voting whether in fact Sham Shah is a Gond. In support of this contention Mr. Bobde drew our attention to the evidence of Jagdishrao Salwe (A.W. 1) and Ramchandra Tekam (A.W. 42). Jagdishrao Salwe has deposed that on 10th March, 1957, in a public meeting at Chamorshi, Mr. Kannamwar told the people that the appellant was trying to establish a Gond Raj and he also said that it was a question whether the appellant was a Gond. This witness is highly interested in the appellant and appears to be antagonistic with the respondent. On his own admission he was a member of the Congress party. He was not given a Congress ticket for the electioin. Yet in the beginning he stood as a candidate for the election. He then withdrew his candidature in favour of the appellant. He later became a counting agent of the appellant. The Tribunal, in our opinion, was, therefore, justified in disbelieving the testimony of this witness. The other witness is Ramchandra Tekam (A.W. 42). He has deposed that he was at Kurkheda on 9th February 1957 and in a public meeting addressed by Mr. Kannamkar he stated that the

appellant was contesting the election to bring back a British Raj and to get back his Jamindari. He also said that the people should ask the appellant before they voted for him that he was a Gond. This witness, on his own admission, was working in that election for the appellant and had been moving from place to place to do propaganda work on behalf of the appellant. This witness, therefore, is highly interested in the appellant, and, in our opinion, the Tribunal was justified in disbelieving him. Apart from this, even assuming for a moment that we accept the testimony of both these witnesses and assume that Mr. Kannamwar did make such speeches at both these places even then in the absence of any evidence that those speeches were delivered with the consent of the respondent or his election agents, the appellant cannot avail of this evidence without proving that his election had been materially affected by those speeches. As already stated, the appellant has not tendered any reliable evidence to show that the result of the election had been materially affect on account of the aforesaid speeches of Mr. Kannamwar. This evidence, therefore, even if accepted, is hardly of any assistance to the appellant. The respondent has examined Mr. Kannamwar as R.W. 20. He had denied having made any speech. In these circumstances, in our opinion, this contention also fails.

The next contention raised [3(iv) of the petition] is that on 24th February, 1957 the respondent promised to give Rs. 300/- as donation for construction of a school building at Manora; the area is thickly populated by Adiwasis; the donation was pronounced by respondent with a view to induce the voters in that locality and interested in the school building to vote in favour of the respondent. "On being ordered to furnish particulars, the appellant stated that the respondent had promised to donate Rs. 300/- in a public meeting held by him at Manora on 24th February, 1957 at about 4 P.M. The promise was given to the Chairman of the School Committee and Udhao Fakira Gedam, Dashrath Pochu Kowe, Ratansingh Lalji Zumka, etc., were present at the meeting. Out of these persons, the appellant has examined only Dashrath Pochu Kowe (A.W. 3). This witness has deposed that on 23rd February, 1957 some Congress workers had visited Manora; these workers told the people to vote for the Congress candidates; then the Gram-Panchayat members of Manora told the Congress workers that a candidate of a party which would donate the amount of Rs. 300/- for the construction of the building of the school at Manora would be supported by them; the Congress workers said that they would intimate that to Mr. Swami (respondent) who would visit the village on the next day; on the next day Mr. Swami visited Manora along with his workers and stayed at the Patil's Wada; people assembled there and the Gram Panchayat members made a demand that a candidate of a party which would donate Rs. 300/- for the construction of the school building would be supported by the village people; Mr. Swami then told them that he would pay Rs. 300/- for the construction of the school building as they were the members of the Gram Panchayat and the village people would abide by their advice. Now this evidence is at variance with the pleas raised. The plea raised is that the respondent Swami made this promise to the Chairman of the School Committee in a public meeting held by him at Manora on 24th February, 1957 at about 4 P.M. The evidence is that the members of the Gram Panchayat went to the place where Mr. Swami was staying and made a demand as aforesaid and then Mr. Swamy gave a promise to them. The evidence appears to be artificial. True, the respondent in his evidence has admitted that he had paid a visit to village Manora but has denied that he had given any such promise to any person. He has examined the President of the School Committee, Raghunath (R.W. 16). His evidence negatives the plea raised. Raghunath has deposed that no such promise was made to him by Mr. Swami. Mr. Bobde contends that the evidence of this witness should not be accepted because he had come to Court without summons. This by itself can hardly be a ground to disbelieve him. Apart from the evidence of this witness, there is also the evidence of other two witnesses, namely Nilkanthrao Diwanji (R.W. 4) and Anandrao Gawande (R. W. 9). They have deposed that respondent had not made any such promise in his visit to Manora. This being the state of evidence of the respective parties on this question, in our view, the Tribunal was not in error in holding that the respondent had not made any such promise.

We next come to the last contention raised by Mr. Bobde [3(iii) of the petition]. The contention is that the respondent had engaged several persons to get the votes, to collect the ballot papers outside the booths who used to ask the voters not to put their ballot paper into the box but to bring it outside; such ballot papers were subsequently collected and purchased; one of the trusted voters of the respondent used to go inside the booth with these purchased ballot papers and they were put into the ballot box of the respondent

at Thahegaon, Wasonda, Maroda, in the Armori Legislative Assembly Constituency it was noticed at the time of counting that several ballot papers were found in one fold as if put in by one person who collected them; at Ballarpur both No 4, on 25th February, 1957 it was noticed that a person by name Kukum was bringing out his vote for sale to the agent of the respondent; the matter was instantly reported to the Presiding Officer who handed that person over to the Police; the case against him was pending in Court. On benig ordered by the Tribunal to give particulars regarding the names of persons engaged by the respondent for purchasing ballot papers and the booths where they operated and to give the names of the respondent's agent to whom Hukum had offered his ballot paper for sale, appellant stated that the respondent had engaged one Jaiwant, Secretary of the Syndicate, Sakharam Chilke, Ramawatar, wife of Ramawatar and Sureshwarprasad to collect ballot papers outside the booths of Ballapur Nos. 2 to 10; Sakharam Chilke was respondent's agent to whom Hukum had brought the ballot paper for sale. The evidence to which Mr. Bobde referred to in this connection is that of Madhao Mukaji Khule (A.W. 4), Anwikar (A.W. 10), the Election Officer, and to Ex. R-137 (certified copy of the rejected ballot papers). Now, the evidence of Anwikar read together with Ex. R-137 establishes that in all about 83 ballot papers were rejected on this ground from the ballot boxes of the respondent. It is, however, pertinent to note that not a single ballot paper was rejected on this ground for the respondent's ballot boxes placed at the polling booths at Ballarpur. The plea raised by the appellant in the particulars supplied by him therefore stands unproved. Apart from this, this evidence is not sufficient to connect the respondent with this corrupt practice. It is neither pleaded nor proved that any of the respondent's men were present at the polling stations where the corrupt practice had been resorted to. In this state of evidence, it cannot be said that the corrupt practice had been brought home to the respondent. Admittedly all these ballot papers have been rejected. It, therefore, cannot be said that it has in any manner affected the result of the election. No evidence is led to establish the other contention that Hukum sold his ballot paper to respondent's agent Sakharam Chilke. This allegation stands unproved. The evidence on which reliance was placed is the evidence of Madhao Mukaji Khule. We do not find anything in his evidence which is relevant to the plea raised, namely that Hukum had brought the ballot paper to Sakharam Chilke for sale. In this state of evidence, in our opinion, this contention also fails.

The last ground raised by Mr. Bobde is that the Tribunal was in error in awarding Rs. 1500 as counsel's fee to the respondent; at the time of filling the election petition, the appellant was required to make a deposit of only Rs. 1,000/- and this indicates that the costs to be awarded by the Election Tribunal should not exceed Rs. 1,000/-. In our view, this contention has no force. No such limitation is placed on the discretion of the Tribunal in section 120 of the Act which confers powers on the Tribunal to award costs including pleader's fees as it deems proper. We have not been shown any rule or any provision where any restriction is placed on the powers of the Tribunal in awarding the costs. Under section 120 of the Act, the costs are within the discretion of the Tribunal and in view of the contest raised before the Tribunal by the appellant on numerous grounds we do not consider that the costs awarded are in any manner excessive.

In the result, therefore, the appeal fails and is dismissed with costs.

By order of the Court,

G. S. JADHAV,
Special Officer.

[No. 82/466/57/2440.]

By order,
DIN DAYAL, Under Secy.

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